

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Carol A. Wilson, Administrator,
et al.,

Plaintiffs,

v.

Case No. 2:15-cv-2760

All Phase Masonry and
Construction, LLC,

JUDGE ALGENON L. MARBLEY
Magistrate Judge Kemp

Defendant.

REPORT AND RECOMMENDATION

After Plaintiffs moved for an order to show cause why defendant should not be held in contempt for failure to comply with the Court's order of March 14, 2016, entering default judgment and ordering an audit, and after that motion was referred to the Magistrate Judge (Doc. 13), the Court directed Defendant to appear on August 24, 2016, at 10:00 a.m. in Courtroom 183, 85 Marconi Boulevard, Columbus, Ohio 43215, to show cause why a finding of contempt should not be made. That order was served on the defendant on July 15 2016, by the United States Marshals Service. (Doc. 15). The hearing was held, but Defendant did not appear.

Based upon the motion for contempt (Doc. 11) and Exhibits (Doc. 12), the Court finds that Defendant has violated the order of March 14, 2016, by failing to permit an audit of its records. It is therefore recommended that Defendant be held in contempt, and that a fine of \$100.00 per day be imposed on Defendant until it complies with the order. It is also recommended that Defendant be ordered to pay all attorneys' fees and costs reasonably expended by Plaintiffs in connection with the contempt proceedings. Finally, it is recommended that any decision on the

motion for contempt be held in abeyance if, within the time allowed for objections to this Report and Recommendation (fourteen days), Defendant complies with the order concerning an audit.

The United States Marshal is directed to serve this Report and Recommendation on the Defendant by personal service.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp
United States Magistrate Judge